

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7834 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MUSTAKBHAI ISABHAI JUNEJA

Versus

STATE OF GUJARAT

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Appearance:

MR YATIN SONI for Petitioner

MR SP DAVE AGP for Respondent No. 2

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 24/11/97

ORAL JUDGEMENT

1. The petitioner, at present under detention pursuant to the order of detention passed by the Police Commissioner, Rajkot City on 21.4.1997 so as to deter him from carrying on his anti-social activities a challenge to the maintenance of public order, calls in question the legality and validity of the said order.

2. The facts which led the petitioner to prefer this

petition may in brief be stated. Certain complaints came to be lodged in the Pradhumannagar Police Station, Rajkot against the petitioner. The first complaint was with regards to the offences punishable under section 461 and 379 of IPC, the second one was pertaining to the offence punishable under sec. 447, 379 read with section 114 of IPC, the third complaint was with regards to the offences punishable under sec. 379 of IPC and 25(c) of the Telegraph Act, alleging that the petitioner caused injury by giving knife blows, the fourth complaint was lodged for the offences punishable under section 324, 323, 504, 506(2), read with section 114 and 427 of IPC, while the last complaint was with regard to the offences punishable under section 302, 307, 324, 143, 147, 148 and 149 of IPC read with section 114 of IPC. When in such sequence, the offences came to be lodged, the authority thought it fit to have a deep inquiry. During the course of inquisition, it was noticed that with his compeers associates the petitioner was carrying on his criminal activities striking terror in the society. He was considered to be the Yahoo and dangerous person, and people had cultivated the feelings of insecurity as they were apprehending danger to their safety at any time. No one was therefore ready to be the linkboy and state against the petitioner, on the contrary everyone preferred to suffer injustice because everyone knowing well that if a statement is made or he would not bend to his way, it would amount to inviting death warrant thought it wise to keep his lips tight. Certain statements of the witnesses however after considerable efforts were recorded. The authority passing the order, considering the materials before him was satisfied that the petitioner was the hector or a terror. He was not only habitual in committing criminal wrongs but retributive also. To control his anti social activities putting the people to imminent danger to their safety, the ordinary laws applicable were sounding dull, and the only way out was to exercise the powers under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act and pass the order of detention. With the result, the order in question came to be passed on 21.4.1997 and the petitioner came to be arrested. Hence, this petition is filed under Article 226 of the Constitution of India challenging the legality and validity of the order.

3. Assailing the order, it is submitted that on the facts alleged, the petitioner cannot be branded as dangerous person, and the cases having individual or personal effects on which the reliance is placed, can well be dealt with under the general law. It would not, therefore, be just to hold that such criminal activities

were having adverse effects to the maintenance of public order. When it is alleged that the petitioner was carrying out his anti social activities with the help of his associates, it was incumbent upon that authority to furnish the particulars of those associates, but when the particulars were withheld without any just cause, the right to make effective representation was jeopardised. It was also submitted that there was no just cause to exercise the privilege under sec. 9(2) of the Act, and withheld the particulars of the witnesses whose statements were recorded by the detaining authority. Needless to say that Mr. Dave, the learned AGP has submitted that the order of the detention is legal and urged to reject this application.

4. Admittedly, the above five complaints have been lodged before the Pradhyumnagar Police Station. It is not necessary to repeat the particulars of those complaints, when in short, I have hereinabove stated. Whether on the basis of those complaints, can it be said that those criminal wrongs of the petitioner are the challenge to the maintenance of public order. The Supreme Court, while dealing with the likewise question in the case of Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police & Ors., reported in 36(2) [1995 (2)] GLR, 1268, has pointed out the distinction between the "public order" and "law and order" because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of "law and order" and which have nothing to do with the "maintenance of public order". If there is a stray instance the same will not justify the authority to describe the case falling within the ambit of maintenance of public order and branding the detenu as dangerous person. If under the ordinary law, the wrongdoer can be dealt with effectively, it would more or less the case of law and order and not maintenance of public order. While dealing with the similar question in Special Civil Application No. 6151 of 1997, this Court (Coram: M.S. Parikh, J.) has, referring the decision of the Division Bench of this Court (Coram: A.P. Ravani & J.M. Panchal, JJ) in Special Criminal Application No. 1681 of 1992, held that even if 19 cases are registered against the detenu, it would be difficult to say that the same would affect even the tempo of public life and would be the challenge to maintenance of public order. In that case, the detenu was not held to be a dangerous person and his detention order has held unconstitutional and invalid. In that view of the decision, and the decision of the Division Bench referred therein, in this case also

simply because the aforesaid five complaints are lodged, it would be unjust to hold that the same would certainly be the challenge to the maintenance of public order. These wrongs are personal and can hardly have any impact on public order, and the people would not have cause to assume fear of violence or worry about their safety.

5. To brand the person as dangerous person or rogue, yahoo or a hector, it must be shown that he is habitually committing or abetting the commission of the offences punishable under Chapter XVI or Chapter XVII of the IPC. The expression 'habit' or 'habitual' has not defined in the Act, but certainly does not refer to the frequency of the occasion but to the invariability practice and habit that has to be proved by totality of facts. It must be shown that the totality of facts led to a reasonable conclusion that the person is habitual criminal. Hence, there should be positive material to indicate that such person is habitually committing or attempting to commit or abutting the commission of offences. A single isolated or few cases which can well be dealt with under general law and people would pay no attention to those cases will not afford the ground to hold that the detenu is a dangerous person. In this case, there is no material placed before me which is required as per the law hereinabove made clear. Above stated complaints are not sufficient to stamp the petitioner as dangerous person. With the result, the petitioner cannot be branded as dangerous person.

6. If the authority passing the detention order relies upon the fact that the person against whom the order is passed is indulging in anti social activities with the help of his associates or allies, it would be then necessary for the authority to furnish necessary particulars about those associates, provided it is possible so to do, failing which order of detention cannot be maintained, because in that case, it would amount to depriving of the detenu from knowing the grounds and case against him and make effective representation against the order. For my such view, a reference of the case of Gopal Bauri vs. The District Magistrate, Burdwan & others, AIR 1975, S. C. 781 may be made. In this case though it is alleged that with the help of the associates the petitioner is carrying on his criminal activities disturbing the public order, the particulars of those associates are for no good reasons withheld. It is not the case that associates were unknown and during investigation their particulars could not be collected. The inability to furnish particulars about the associates neither pleaded nor stated on oath,

shrewdly the respondents have remained silent. When that is so, it can be said that respondents were in a position to furnish but for no good cause they have withheld the particulars. The right to represent is therefore marred. Hence, the order in law is bad.

7. Nodoubt, under section 9(2) of the Act, the authority if it deems fit considering the fact before him and fully satisfying about the same that if the particulars of the witnesses giving statements are disclosed, it would endangerous to the safety of those giving the statements. But in that case, filing the affidavit, the authority has to satisfy the court; and, what is further required is that the authority has to satisfy itself by personal inquiry about the same and cannot feel satisfied entrusting the task thereof to his subordinate or any other authority and going through his report. In this case, reading para-5 of the order, it is clear that the authority passing the order has not personally satisfied about the fear of violance expressed by the witnesses. He has mainly relied upon the report made by his subordinate to whom the task of ascertaining about the same was assigned, which is not in consonance with the law.

8. For the aforesaid reasons, the order of detention being unconstitutional and illegal, cannot be maintained. The same is hereby quashed, and the petitioner is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute. D.S. Permitted.

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